

### **Independent Claims 3, 33, and 46**

Independent claim 3 explicitly requires that the "frequency of performing said channel quality measurements is a function of the relative position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." The Examiner points to portions of Wan, specifically figures 5-8, col. 4, lines 37-53, col. 8, lines 10-67, and col. 12 line 25 to col. 13, line 15, in an attempt to show this element. However, a close reading of these passages/figures merely discloses that that Wan, at most, teaches varying the frequency of channel measurements as a function of the mobile station's relationship to a single base station - the base station that the mobile station is currently locked on. There is absolutely no teaching in the cited passages/figures of Wan, or indeed anywhere in Wan, that the mobile station should consider its positional relationship to a second base station in any way. Thus, Wan simply does not show changing the frequency of signal measurements as a function of the "relative position of position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." Applicant submits that Wan's teaching of looking at only one base station to help set the measurement frequency is substantially different from, and does not suggest, Applicant's claimed approach that looks to two different base stations to help set the measurement frequency.

Applicant does note that the Examiner's detailed action states that the last element of claim 3 would have been obvious; however, there is no support for the Examiner's proposition, in Wan or elsewhere. Thus, the Examiner's obvious rationale appears to be completely unsupported by the cited reference or any other articulated

rationale. Applicant respectfully submits that the law, and specifically the MPEP, require that the Examiner specifically support the obviousness rationale; merely restating the claim element and calling it obvious is inadequate to support a *prima facie* case of obviousness.

In view of the above, Applicant submits that independent claim 3, and its dependent claims 4-5, define patentable subject matter over the cited art. Their allowance is requested.

Similarly, independent claim 46 explicitly requires the "frequency of performing said periodic task is a function of the relative position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." For reasons similar to those expressed above with respect to independent claim 3, Applicant submits that independent claim 46, and its dependent claims 47-48, define patentable subject matter over the cited art. Their allowance is requested.

Likewise, independent apparatus claim 33 explicitly requires the control logic that "varies the frequency of performing said channel quality measurements based on the relative position of said mobile station with respect to a first base station serving said mobile station and at least one additional base station." For reasons similar to those expressed above with respect to independent claim 3, Applicant submits that independent apparatus claim 33, and its dependent claims 34-35, define patentable subject matter over the cited art. Their allowance is requested.

### **Independent Claims 8, 36, and 49**

Independent claim 8 explicitly requires that the "frequency of performing said channel quality measurements is a function of the length of time said mobile station remains in said position."

Applicant first notes that the Examiner fails to properly address this "length of time" limitation in the Action. Instead, the Examiner appears to cut-and-paste the same verbiage used to reject claim 3 into the rejection of claim 8.<sup>1</sup> Indeed, the stated motivation to modify Wan, and the resulting modification, completely fail to address the "length of time" limitation. Thus, Applicant submits that the Examiner, by completely ignoring an express limitation in the claim, has failed to establish a legally proper *prima facie* case of obviousness. Accordingly, the §103 rejection of claims 2, 8-14 must necessarily fail. The same argument regarding the failure to address an express limitation applies for independent claim 36, its dependent claims 32 and 37, and independent claim 49, and its dependent claim 45.

Despite the above, Applicant notes that Wan fails to teach or suggest the "length of time" limitation cited above. A close reading of Wan (including figures 5-8, col. 4, lines 37-53, col. 8, lines 10-67, and col. 12 line 25 to col. 13, line 15) merely discloses that that Wan, at most, teaches varying the frequency of channel measurements as a function of the mobile station's relationship to the base station that the mobile station is currently locked on. However, there is absolutely no teaching anywhere in Wan that the length of time that a mobile station stays in one place should be used as a basis for

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<sup>1</sup> Applicant also notes that the Examiner fails to fully describe or discuss the 2nd element of claim 8; however, Applicant has assumed that the discussion corresponds to that for the corresponding element of claim 3. The Examiner is requested to clarify this point if the rejection is maintained so that proper basis for appeal may be established during prosecution as required by the MPEP.

setting the frequency. Wan goes to great length to talk about variations in signal strength from the base station, or speed of the mobile station, but never mentions the length of time that the mobile stays in one location. Applicant submits that whatever may be the teachings of Wan, they simply do not show or suggest that the "frequency of performing said channel quality measurements is a function of the length of time said mobile station remains in said position." Accordingly, Applicant submits that independent claim 8, and its dependent claims 2, 9-14, define patentable subject matter over the cited art. Their allowance is requested.

Similarly, independent claim 49 explicitly requires the "frequency of performing said periodic task is a function of the length of time said mobile station remains in said position." For reasons similar to those expressed above with respect to independent claim 8, Applicant submits that independent claim 49, and its dependent claim 45, define patentable subject matter over the cited art. Their allowance is requested.

Likewise, independent apparatus claim 36 explicitly requires the control logic that "varies the frequency of performing said channel quality measurements based on the length of time said mobile station remains in said position." For reasons similar to those expressed above with respect to independent claim 8, Applicant submits that independent apparatus claim 36, and its dependent claims 32 and 37, define patentable subject matter over the cited art. Their allowance is requested.

### **Independent Claims 15 and 38**

Independent claim 15 explicitly requires that the position of the mobile station be updated periodically, with the "frequency of said updating [being] a function of said position of said mobile station."

Applicant first notes that the Examiner fails to properly address this "updating of position" limitation in the Action. Instead, the Examiner appears to cut-and-paste the same verbiage used to reject claim 3 into the rejection of claim 15. Indeed, the stated motivation to modify Wan, and the resulting modification, completely fail to address the "updating of position" limitation. Thus, Applicant submits that the Examiner has failed to establish a legally proper *prima facie* case of obviousness. Accordingly, the §103 rejection of claims 15-26 must necessarily fail. The same argument regarding the failure to address an express limitation applies for independent claim 38, its dependent claims 39-43.

Despite the above, Applicant notes that Wan fails to teach or suggest the "updating of position" limitation cited above. A close reading of Wan (including figures 5-8, col. 4, lines 37-53, col. 8, lines 10-67, and col. 12 line 25 to col. 13, line 15) merely discloses that that Wan, at most, teaches noting the position of the mobile station when a signal strength (of the signal from the base station that the mobile station is currently locked on) varies by a predetermined amount. Thus, Wan at most teaches determining position when signal quality drops a certain amount. However, Wan says nothing about changing the frequency of position updates based on the position of the mobile station. Simply put, a triggered-based-on-signal-strength approach is not the same as a triggered-based-on-position approach. Applicant submits that whatever may be the

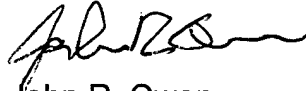
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teachings of Wan, they simply do not show or suggest that the "frequency of ...  
 updating [position] is a function of [the] position of said mobile station." Accordingly,  
 Applicant submits that independent claim 15, and its dependent claims 16-26, define  
 patentable subject matter over the cited art. Their allowance is requested.

Likewise, independent apparatus claim 38 explicitly requires the control logic that  
 "varies the frequency of determining said position of said mobile station as a function of  
 said position." For reasons similar to those expressed above with respect to  
 independent claim 15, Applicant submits that independent apparatus claim 38, and its  
 dependent claims 39-43, define patentable subject matter over the cited art. Their  
 allowance is requested.

**Request for Telephone Interview with Supervisor**

As the present case has been subjected to five (5) Actions to date, the  
 undersigned specifically requests a telephone interview with the Examiner and the  
 Examiner's supervisor if the current rejections are made final.

Respectfully submitted,  
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